MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 14

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VI pertaining to Montana Indian Language Preservation Grants	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 11, 2023, at 10:00 a.m., the Office of Public Instruction (OPI) will hold an in-person public hearing at the OPI building at 1300 11th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules. Details about remote participation via the ZOOM meeting platform will be available prior to the hearing at https://opi.mt.gov/MILP.

2. OPI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact OPI no later than 5:00 p.m. on August 4, 2023, to advise us of the nature of the accommodation that you need. Please contact Brenton Craggs, Office of Public Instruction, 1227 11th Avenue, Helena, Montana, 59601; telephone (406) 444-5882; fax (406) 444-2893; or e-mail milppubliccomment@mt.gov.

3. The rules proposed to be adopted are as follows:

NEW RULE I ROLES (1) Within the Montana Indian Language Preservation (MILP) program, tribal governments receive MILP funds from the Office of Public Instruction (OPI) and designate the tribal education department, the tribal culture and language department, or the selected tribal entity, college, or language program to administer the grant objectives.

(2) Culture and language departments are unique in each tribal nation within Montana as most tribes have established a culture and language department in various forms within the college or tribal departments. Some tribes have established language immersion schools in their indigenous language. The MILP program can be facilitated by these various entities within the tribe at the discretion of the tribal government. The selected organization will opt into MILP and propose a language preservation plan, budget narrative, and outcomes as it pertains to the MILP program language through these guidelines and instituted through the Egrants system within the Office of Public Instruction overseen by the Language and Culture Specialist. The usage of the funds, and the development of their outcomes, will be monitored through the Egrants system and the OPI Language and Culture Specialist.

(3) Tribal governments may work with school districts as part of their language preservation efforts. Where there is an established partnership between tribes and school districts, language and culture specialists will adhere to the guidelines established by the tribe for the languages they oversee.

AUTH: 20-9-537, MCA
IMP: 20-9-537, MCA

NEW RULE II DEFINING INDIAN LANGUAGE FLUENCY (1) "Fluency" is:

(a) the flow in spoken or written language as perceived by the listener or reader, with the flow made possible by clarity of expression, the acceptable ordering of ideas, and the use of vocabulary and syntax appropriate to the context; or

(b) general mastery of spoken or written language, easy and accurate, with few mistakes, and the ability to contribute to diverse discussions.

(2) Fluency is determined by each tribe's language and culture department via oral exam to ensure that speakers are able to converse in a variety of contexts and purposes.

(3) Montana Indian language fluency can be rated according to the following scale:

(a) Beginning.

(i) No memorization.

(ii) Speaker needs help and support to understand or say anything.

(b) Simple Basics.

(i) Very limited usage, mostly memorized.

(ii) Speaker needs help and support to understand or speak basic sentences.

(c) Progressing.

(i) Beginning mastery, which requires significant effort and results in many mistakes.

(ii) Speaker understands and can say simple sentences.

(d) Ready Equipped.

(i) General mastery with easy and accurate communication with few mistakes.

(ii) Speaker understands and can say simple sentences.

(e) Fluent.

(i) General mastery with easy and accurate communication with few mistakes.

(ii) Speaker understands and can contribute to diverse discussions.

(f) Expert.

(i) Advanced/native mastery, with regular and accurate use of words that have multiple meanings.

(ii) Speaker understands and can converse about anything.

(4) Progress regarding Indian language fluency for a tribe will be tracked according to the following scale:

(a) Level One: The tribe has fewer than 10 fluent language speakers, no culture or language department, a beginning curriculum level, a lack of resources in support of language, no tribal education department, and no class 7 standards have been established.

(b) Level Two: The tribe has 10 to 50 language speakers and class 7s within the tribe, a language and culture department established, a class 7 resolution and guidance in place, developed intermediate curriculum level, developed a tribal education department, and tribal fluency standards are in progress.

(c) Level Three: The tribe has 50 or more language speakers and class 7s, a language and cultures department, a tribal education department, curriculum, fluency standards in place, and class 7 process is expanding.

AUTH: 20-9-537, MCA
IMP: 20-9-537, MCA

NEW RULE III PROGRAM (1) The governing bodies of each of Montana's eight tribal nations or community entities may execute a contract with the Office of Public Instruction for the Montana Indian Language Preservation (MILP) program.

(2) Tribal governments must enter into a contract with the Office of Public Instruction no later than February 1, 2024.

(3) Production of language products and implementation of product objectives must be incorporated into the overall contract between each tribal government and the Office of Public Instruction.

(4) A tribal resolution or its equivalent may accompany the application authorizing application to the program for the specified project.

(5) Tribal governments may enter into an agreement with a subrecipient, or designee, to transfer the responsibilities of administering part or whole of the program only with the prior approval of the Office of Public Instruction before subrecipient activities are performed.

(6) Grantees will document the number of students with early learning providers, the number of schools, and the number of adult education offerings. Grantees will show a documented 10% or greater increase in outreach to language learners over two years.

(7) Funds may not be used to pay for any of the following activities or costs:

(a) operational or maintenance costs or expenses;

(b) financial expenses including, but not limited to, interest expense, bond issuance costs, or any other debt-related costs or expenses;

(c) projects receiving funding for the same services, equipment, or goods through any other local, state, or federal grant or other funding program, except as necessary to fully fund the project; and

(d) projects involving a casino or other gambling establishment, aquarium, zoo, golf course, swimming pool, or similar programs not directly related to Indian language preservation.

(8) Eligible uses of funds include:

(a) development of audio and visual recordings;

(b) creation of reference materials which may be audio, visual, electronic, and written format;

(c) creation of publication of curricula, which may include electronic curricula;

(d) language classes;

(e) publication of literature; or

(f) language programs, workshops, seminars, camps, and other presentations in formal and informal settings.

(9) Program funds will be equally distributed through a contract to each tribal government that successfully applies, and is approved, for the funds. If fewer than the eight recognized tribal governments successfully apply for the MILP funds, the

remaining funds will be distributed equally among the tribal governments who successfully applied for the funds.

(10) Distribution of funds are governed by individual contracts between the Office of Public Instruction and each tribal government or community entity. The individual contracts must specify the method of distribution from the Office of Public Instruction to the tribal government, community entity, or its designee. Funds may be distributed directly to a designee if this is expressly noted in a subrecipient agreement and a designation of depository form is completed with account information.

(11) Tribal governments, community entities, or their designees must comply with applicable laws, rules, policies, and regulations concerning, but not limited to, human rights, civil rights, employment law, labor law, and contract law.

(12) The total administrative fee that may be charged to the grant by the grantee may not exceed 5% of the total grant award for administration of the contract.

(13) The total personnel budget (salary and fringe benefits) may not exceed 45% of the total grant award.

AUTH: 20-9-537, MCA
IMP: 20-9-537, MCA

NEW RULE IV PROPOSAL AND CONTRACTING TIMELINE (1) To be considered for MILP funding, tribal governments or community entities must submit their application by December 31 of the prior year through the Egrants online platform.

(2) Egrant applications must demonstrate how activities will meet the objectives of the program funding and the capacity of the organization to carry out the activities, including:

(a) a description of language and culture committees or any other groups involved;

(b) a description of the curriculum to be taught through courses, language programs, songs, and any other methods utilized to instruct future language speakers;

(c) a description of the role of language and culture specialists involved or otherwise partnering with the program participants;

(d) a description of any professional development activities provided through the program, including those which serve language and culture specialists;

(e) a designation of a tribal authorized representative to administer the program which must be a tribal education department or equivalent or, if the tribe does not have an education department, to another entity such as a tribal culture or language department or equivalent, including any resolution indicating partnerships with the tribes; and

(f) a program description which includes the following:

(i) an estimate of the current number of fluent speakers in the tribe;

(ii) plans to build multigenerational fluency through any plans to partner with early learning providers and adult education offerings; and

(iii) a proposed budget for the expenditure of funds received from MILP and any other funding sources.

(3) All language in program proposals are provided to, and approved by, the Office of Public Instruction.

(4) Each tribal government must execute a contract by February 1 of a year they are disbursed the funds. Project grantees are responsible for informing and assisting tribal or entity leadership and finance departments with obtaining signatures and required financial forms. Upon execution of the contract, tribal governments, community entities, or their designees may receive their first disbursement of funds.

(5) Any remaining funds that are unencumbered as of the first working day of January will revert to the successful applicants.

AUTH: 20-9-537, MCA
IMP: 20-9-537, MCA

NEW RULE V REPORTING (1) Reports are required to be submitted to the Office of Public Instruction by the tribal government, community entities, or their designees including partnering school districts. An annual report will be required for the program which includes a start-up assessment, midterm progress report, and final program closeout report. Additional reporting and touch points may be needed for projects not meeting projected activity dates and deliverables.

(2) Site visits may be made by the OPI staff that coincide with report due dates. Site visits may include an initial site visit, a midterm progress visit, a final preparation visit, or any combination of these.

(3) MILP reports from tribes are due by November 20 of each year that funding is received.

(4) Tribal governments, community entities, or their designees must submit written reports on:

(a) expenditures which compare budgets and expenses;

(b) overall program progress in relation to timelines and tangible goods;

(c) community engagement, which includes tracking:

(i) number of participants and speakers approaching fluency

(ii) leveraged resources which may include cash or in-kind services (office space, meeting space, vehicle use, pro bono representation, volunteer support, etc.); and

(d) administration and maintenance of long-term language preservation strategic plan.

(5) The Office of Public Instruction will report on the activities of MILP to the Legislature throughout the course of the program. These reports will include:

(a) the current MILP guidelines;

(b) a summary of the program activities of each participating tribal government; and

(c) progress metrics showing how activities funded under this program are promoting language fluency.

(6) Tribes may seek data from immersion schools, tribal colleges, community and virtual classes, and any other means that were impacted by the MILP funds.

(7) If a tribe chooses to partner with a local school district, a letter of commitment or memorandum of understanding from the school district should be submitted along with the application.

AUTH: 20-9-537, MCA
IMP: 20-9-537, MCA

NEW RULE VI ADMINISTRATIVE PROCEDURES AND REQUIREMENTS

(1) Recipients must use an accounting system that conforms to Generally Accepted Accounting Principles (GAAP), in accordance with 18-4-311, MCA.

(2) Payment for approved expenses under the contract will be paid in a single lump sum after receipt of the following required forms:

(a) W-9 Form;

(b) electronic deposit form;

(c) a completed cash request through Egrants;

(d) subrecipient agreement form, if funds are to be deposited directly with a designee; and

(e) expenditure and progress reports and any requested follow-up information submitted to and accepted as sufficient by the Office of Public Instruction.

(3) Any additional project payments for additional deliverables will be identified in amended contracts with the grantees.

(4) If unexpected funds have the potential of reverting to the general fund during the fourth quarter of the state's fiscal year, which begins April 1, the Office of Public Instruction may contract directly with an established subrecipient in an amount proportionate to the unexpended funds.

(5) Contracts that are funded are subject to disclosure, in response to requests received under provisions of the Montana Constitution (Article II, Section 9). Information that could reasonably be considered proprietary, privileged, or confidential in nature should be identified as such in the contract.

(6) In performing the work on the project, the grantee must comply with all applicable tribal, state, federal, and local laws, ordinances, and regulations, including any necessary cultural review, and obtain all permits, licenses, etc., required to perform the project. If the program funds are used in conjunction with funds from federal sources, compliance with additional federal regulations and laws may apply.

(7) The grantee must return to the Office of Public Instruction all funds that are determined by the Office of Public Instruction to have been spent in violation of the grant contract. In addition, any reports mentioned in this subchapter that have not been received by the Office of Public Instruction will result in the grantee being denied approval to receive funds for the following year. If the work or the project is determined to not have been performed or completed as contracted, the Office of Public Instruction reserves the right to declare a default on the contract and demand all funds of the contract be returned to the Office of Public Instruction.

(8) Any requested changes to the original scope of work or budget adjustments must be submitted in writing to the Office of Public Instruction. The Office of Public Instruction will determine if the request aligns with the program guidelines which includes all requirements noted in this rule.

AUTH: 20-9-537, MCA
IMP: 20-9-537, MCA

REASON: The proposed rules would establish standards for the Montana Indian Language Preservation program, as required by House Bill 287 (2023) which amended 20-9-537, MCA. These rules were developed in collaboration with tribal governments in Montana to satisfy the requirements of HB 287 while still remaining flexible to accommodate the individual language preservation needs of each tribe.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Brenton Craggs, Office of Public Instruction, 1227 11th Avenue, Helena, Montana, 59601; telephone (406) 444-5882; fax (406) 444-2893; or e-mail milppubliccomment@mt.gov, and must be received no later than 5:00 p.m., August 18, 2023.

5. OPI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, email, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by email unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by OPI.

6. An electronic copy of this proposal notice is available through the Secretary of State's website at http://sosmt.gov/ARM/Register.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by phone on July 11, 2023.

8. With regard to the requirements of 2-4-111, MCA, OPI has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Robert Stutz
Robert Stutz
Rule Reviewer

/s/ Elsie Arntzen
Elsie Arntzen
Superintendent of Public Instruction
Office of Public Instruction

Certified to the Secretary of State July 11, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.22.102 pertaining to Issuance of Permits	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on August 14, 2023, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N. Roberts St., Room 304, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9525; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: MDOLcomments@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

32.22.102 ISSUANCE OF PERMITS (1) and (2) remain the same.
~~(3) Applicants must be residents of and domiciled in Montana.~~
~~(a) Nonresident permits may be authorized by the Board of Livestock when adequate service cannot be provided by Montana permittees.~~
(4) and (5) remain the same but are renumbered (3) and (4).

AUTH: 81-7-502, MCA
IMP: 81-7-502, 81-7-504, MCA

REASON: The department proposes to amend this rule to comply with the repeal of 81-7-503, MCA, passed by the Montana State Legislature in 2023 via HB0104 and carried by Representative Brandon Ler at the request of the department. The repeal of 81-7-503, MCA removed residency requirements for aerial hunting permits, and the rule is being updated to reflect the change.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., August 18, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Executive Officer at the above address no later than 5:00 p.m., August 14, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be three persons based on 32 currently licensed aerial hunters.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on June 6, 2023.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Department of Livestock

Certified to the Secretary of State July 11, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.403 pertaining to diagnostic laboratory fees	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on August 14, 2023, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N Roberts St., Room 304, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9525; fax (406) 444-4316; TDD/Montana Relay Service 1 (800) 253-4091; or e-mail MDOLcomments@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

<u>32.2.403 DIAGNOSTIC LABORATORY FEES</u> (1) and (2) remain the same.
(3) MVDL services and fees:
(a) through (k) remain the same.
(l) Virology

Test		Fee
canine parvovirus SNAP		$30.90
fluorescent antibody (FA) testing - per agent:		
	bovine coronavirus (BCV)	$11.30
	bovine respiratory syncytial virus (BRSV) SN	$11.30
	bovine viral diarrhea virus (BVDV)	$11.30
	canine distemper (CDV)	$11.30
	canine parvovirus (CPV)	$11.30
	equine herpesvirus (EHV)	$11.30
	feline panleukopenia (FPLV)	$11.30
	feline infectious peritonitis (FIP)	$11.30
	feline herpes (FHV)	$11.30
	infectious bovine rhinotracheitis (IBR)	$11.30
	leptospira	$11.30

parainfluenza - 3 Virus (PI-3)	$11.30
porcine parvovirus (PPV)	$11.30
chronic wasting disease IHC	$35.00
chronic wasting disease ELISA	$15.00
virus isolation (livestock only)	$35.00
bovine viral diarrhea virus (BVDV) antigen SNAP test	$7.20
equine virus arteritis (EVA) virus neutralization test	$16.50
pregnancy test	$4.60
small animal pregnancy test	$25.75
coxiella burnetii (Q fever) ELISA	$13.40
parainfluenza 3 serum neutralization (PI-3 SN)	$7.20
canine distemper virus ELISA	$12.00
toxoplasmosis IgG ELISA	$14.50
equine rhinopneumonitis (equine herpesvirus) serum neutralization test	$16.00
ruminant abortion serology panel	$50.00
equine abortion serology panel	$45.00
ovine abortion serology panel	$50.00
brucella canis IFA	$25.00
canine tick-borne disease antibody screen (4 tests)	$80.00
ehrlichia canis (canine ehrlichoisis) IFA	$27.00
anaplasma phagocytophilum (canine asaplasmosis) IFA	$27.00
borrelia burgdorferi (Lyme disease) IFA	$27.00
rickettsia rickettsii (rocky mountain spotted fever) IFA	$27.00
equine tick-borne disease antibody screen (2 tests)	$50.00
anaplasma phagocytophilum (equine erhlichosis) IFA	$27.00
borrelia burgdorferi (Lyme disease) IFA	$27.00

(m) remains the same.

AUTH: 81-1-102, 81-2-102, MCA
IMP: 81-1-301, 81-1-302, 81-2-102, MCA

REASON: The department proposes to change the above rule to include additional testing services not currently offered by the MVDL or any labs in surrounding states. The additional test offerings proposed are expected to provide additional convenience for our clients.

We expect that the incremental additional test fee revenue for the tick-borne disease tests will be negligible as we do not expect high volume.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., August 18, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Executive Officer at the above address no later than 5:00 p.m., August 14, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 85 based upon approximately 600 veterinary submitters, at least 150 non-veterinary submitters, and 100 governmental entities currently using the lab's services.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in four above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Department of Livestock

Certified to the Secretary of State July 11, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.27.902, 37.88.101, and 37.89.201 pertaining to chemical dependency programs and Medicaid mental health services	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 11, 2023, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/86082695581?pwd=WHY3Vyt4NTlqbFVTbXdUdVE4WG9zUT09, meeting ID: 860 8269 5581, and password: 605444; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 860 8269 5581, and password: 605444. Find your local number: https://mt-gov.zoom.us/u/keHCuqTvAD.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on July 28, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.27.902 SUBSTANCE USE DISORDER SERVICES: AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~October 1, 2022~~ May 12, 2023, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at:

~~https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual~~ https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual.

(3) In addition to the requirements contained in rule, the department has developed and published the BHDD Division Non-Medicaid Services Provider Manual for Substance Use Disorder, dated ~~October 1, 2022~~ May 12, 2023, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena MT 59620-2905 or at: ~~https://dphhs.mt.gov/amdd/AMDDNonMedicaidServicesProviderManual~~ https://dphhs.mt.gov/bhdd/BHDDNonMedicaidServicesProviderManual.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~October 1, 2022~~ May 12, 2023, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at: ~~https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual~~ https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual.

(3) through (5) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.89.201 NON-MEDICAID MENTAL HEALTH SERVICES FOR ADULTS: REQUIREMENTS (1) In addition to requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities Division Non-Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~October 1, 2022~~ May 12, 2023, which provides information and policies pertaining to state-funded behavioral health services and substance use disorder services and implements requirements for utilization management and services. The department adopts and incorporates by reference the manual as part of this rule. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at

~~https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual~~
https://dphhs.mt.gov/bhdd/BHDDNonMedicaidServicesProviderManual.

AUTH: 53-2-201, 53-21-1405, MCA
IMP: 53-21-1401, 53-21-1402, 53-21-1403, 53-21-1404, 53-21-1405, MCA

4. STATEMENT OF REASONABLE NECESSITY

In February 2023, the Secretary of the U.S. Department of Health and Human Services (HHS) approved the final 90-day extension of the COVID-19 Public Health Emergency (PHE), which began in January 2020, and announced the PHE would end on May 11, 2023.

To improve safe access to services throughout the PHE, the Department of Public Health and Human Services (department) removed certain face-to-face delivery requirements in addition to exercising discretion with respect to other regulatory requirements. With the end of the PHE on May 11, 2023, the department re-evaluated face-to-face delivery requirements and other requirements that were affected by the PHE. The department is proposing permanent updates to allow telehealth delivery of identified services, discretion related to staffing, and clarification of utilization review requirements for identified services.

In this proposed rule notice, the department proposes to adopt updated versions of the Behavioral Health and Developmental Disabilities (BHDD) Medicaid and non-Medicaid manuals to effectuate these changes.

The proposed updated manuals, with proposed additions underlined and proposed deletion struck through, are posted on the department's web site at https://dphhs.mt.gov/bhdd/. The department proposes that the effective date for the updated manuals will be May 12, 2023. Each of the rules proposed to be amended refer to the Medicaid or non-Medicaid manual, and the rules must be amended to reflect the updated version and date of the manual.

The following policies would need to be amended to address changes being made as a result of the PHE:

Policy 105 Severe and Disabling Mental Illness would be amended to include current links.

Policy 215 Utilization Review Determinations and Notifications would be amended to ensure consistent technical denial language between youth and adult services.

Policy 310 Administrative Review, Fair Hearing, and Sanctions would be amended to include current links and reflect the current division name.

Policy 420 Community Based Psychiatric Rehabilitation Services (CBPRS) would be amended to reflect the removal of face-to-face requirements and the replacement of such requirements with provisions requiring specific documentation.

Policy 525 Intensive Outpatient for Substance Use Disorder (SUD IOP) would be amended to reflect the removal of face-to-face requirements and the replacement of such requirements with provisions requiring specific documentation. The department also would amend the provision to correct a typographical error. The policy should read, "(7) If the member is unable to receive the minimum hours per week required in (6)(b)."

Policies 415 and 515, Certified Behavioral Health Peer Support Services (CBHPSS) for Mental Health and Substance Use Disorders would be amended to reflect the removal of face-to-face requirements and the replacement of such requirements with provisions requiring specific documentation.

Policy 445 Behavioral Health Group Home would be amended to clarify utilization management requirements.

Policies 455 and 460, Montana Assertive Community Treatment (MACT) and Program for Assertive Community Treatment (PACT) would be amended to reflect additional discretion regarding staff vacancies, to resolve inconsistencies related to the Serious and Disabling Mental Illness Level of Impairment (LOI) worksheet, and to clarify utilization management requirements.

Fiscal Impact

The department has determined the proposed amendments will have no fiscal impact.

5. The proposed rules will be retroactively effective May 12, 2023.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 18, 2023.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless

a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 11, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.34.3005 pertaining to Developmental Disabilities Program Reimbursement for Services	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 10, 2023, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/81808831991?pwd=YnFBaXdCcTdKcFB5dzZUQWl6VHZGZz09, meeting ID: 818 0883 1991, and password: 498398; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 818 0883 1991, and password: 498398. Find your local number: https://mt-gov.zoom.us/u/kratOdwag.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on July 27, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.34.3005 REIMBURSEMENT FOR SERVICES OF MEDICAID FUNDED DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES (HCBS) WAIVER PROGRAMS (1) Reimbursement through the Developmental Disabilities Program's (DDP) Medicaid Home and Community-Based Services Waiver Programs is only available to a provider for services or items:

(a) remains the same.

(b) delivered in accordance with the terms and conditions of the formal approval by the Centers for Medicare & ~~and~~ Medicaid (CMS) governing each waiver program; and

(c) remains the same.

(2) The department adopts and incorporates by this reference the rates of reimbursement and the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in the Montana

Developmental Disabilities Program Services Manual, effective ~~July 1, 2022~~ July 1, 2023. A copy of the manual may be obtained through the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at ~~https://dphhs.mt.gov/dsd/developmentaldisabilities/ddpratesinf~~ https://dphhs.mt.gov/bhdd/DisabilityServices/developmentaldisabilities/ddpratesinf.

AUTH:53-2-201, 53-6-402, MCA
IMP:53-2-201, 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.3005 pertaining to the reimbursement rates in the Montana Disabilities Program Services Manual and updating the effective date to July 1, 2023. The proposed amendments also include changes to the manual to ensure it conforms to the Developmental Disabilities 0208 Comprehensive Waiver, which the Centers for Medicare & Medicaid Services (CMS) recently approved as part of the waiver's routine five-year renewal process.

In 2021, the Montana legislature directed the department to contract with an independent health care consulting firm to conduct a comprehensive rate review of services provided through the Adult Behavioral Health, Children's Mental Health, Developmental Disabilities, and Senior and Long-Term Care programs. The department contracted with Guidehouse, a consulting firm, to conduct a multifaceted study of Medicaid rates within the four programs and make recommendations for rate increases. Through this rule notice, the department proposes to apply funding appropriated by the 2023 legislature across all studied rates in the Developmental Disabilities Home and Community-Based Services Waiver Programs using the methodology recommended by Guidehouse. To reduce existing disparities in rates, this methodology increases rates by a percentage of the difference between current and benchmark rates. Based on the allocated funding, the department is able to fund about 70% of the "gap" between the current rate and the benchmark rate and brings these rates up to an average of 94% of the Guidehouse benchmark effective July 1, 2023. Overall, this methodology results in an increase in funding for all studied rates across the department of approximately 18%, effective July 1, 2023. The specific rate increase for each service is dependent upon the difference between the current rate and the Guidehouse benchmark rate. The following fee schedules have proposed rates that were recommended by the Guidehouse study: Services for Individuals with Developmental Disabilities Enrolled in the 1915 (c) 0208 Home and Community Based (HCBS) Comprehensive Waiver. The proposed rates for can be found on pages 63-65 of the draft Developmental Disabilities Program Services Manual.

The proposed amendments will make the following changes in the Montana Developmental Disabilities Program Services Manual to reflect changes in the

Developmental Disabilities 0208 Comprehensive Waiver: adjust reimbursement rates, add telehealth language to services eligible for telehealth, add legally responsible individuals as allowable paid caregivers, and implement needed changes in the texts of the manual that is incorporated by reference in this rule.

In addition to updating rates as described above, the proposed amendment will incorporate the changes listed below with an effective date of July 1, 2023:

- Update the following service definitions in the manual to be consistent with language in the CMS-approved 0208 Waiver: Adult Foster Support; Assisted Living; Behavioral Support Services (BSS); Individual Goods and Services; Psychological Evaluation, Counseling, and Consultation; Personal Emergency Response System; Remote monitoring; Day Supports and Activities; Respite; Community Transition Services; Companion; Retirement; Physical Therapy; Speech Therapy; and Homemaker.
- Add transportation language to the following services to include transportation in the legislatively approved rates: Congregate Living, Medical GH; Day Activities; Retirement; Assisted Living; Supported Living; Residential Training Supports; and Adult Foster.
- Add additional tiers for BSS service to be consistent with tiers in the CMS-approved 0208 Waiver.
- Add prorating language which is currently contained in provider contract agreements. This proposed change is necessary because provider contract agreements are being replaced with a provider enrollment system.
- Add retainer payments to the following services to be consistent with language for billing modifiers in the CMS-approved 0208 Waiver: Assisted Living; and Retirement.
- Add telehealth language to services eligible for telehealth services. The department has determined the following services can be effectively provided through telehealth: Behavioral Supports Service; Caregiver Training and Support; Nutritionist; Occupational Therapy; Physical Therapy; Private Duty Nursing; Psychological Evaluation, Counseling, and Consultation; Remote monitoring; Residential Habilitation; Speech Therapy; Supported Employment Individual Employment Support; Supported Employment Follow Along Support; and Supports Brokerage.
- Add legally responsible individuals as allowable paid caregivers for the following services: Individual Goods and Services; Specialized Medical Equipment; Transportation; Residential Habilitation; Companion Services; Personal Care; Personal Supports; Supported Employment Follow Along; Supported Employment Co-Worker Support; Supported Employment Individual Employment Support; and Supported Employment Small Group Employment Support.

- Update URL link to the Montana Developmental Disabilities Program Manual.

The proposed Montana Developmental Disabilities Program Services Manual dated July 1, 2023, can be found at https://dphhs.mt.gov/bhdd/DisabilityServices/developmentaldisabilities/ddpratesinf.

Fiscal Impact

The provider rate increases for DD Waiver services are projected to have the following fiscal impact in State Fiscal Year 2024:

$7,920,990 General Fund increase
$14,057,456 Federal Fund increase
$21,978,446 Total Funds increase

5. The department intends to apply these proposed rule amendments retroactively to July 1, 2023. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., August 18, 2023.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will significantly and directly impact small businesses. The group of small businesses probably affected

by the proposed rule amendment are providers of DDP waiver services. The probable significant and direct effects of the proposed amendment on small businesses will be to increase reimbursement rates.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State July 11, 2023.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an emergency rule closing the Holmgren Ranch Fishing Access Site on the Yellowstone River in Stillwater County	)))))	NOTICE OF ADOPTION OF EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Holmgren Ranch Fishing Access Site (FAS):

(a) The Twin Bridges railroad bridge has partially collapsed into the Yellowstone River, and cleanup work and construction are taking place.

(b) The Holmgren Ranch FAS will be used as a worksite and staging area for the assessment and cleanup efforts. Nine rail cars containing chemicals entered the river system. Chemical containment efforts and river cleanup processes are ongoing.

(c) Persons recreating at the FAS would be at risk due to the unsafe conditions at the worksite and staging area.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The emergency rule will be sent to interested parties and published in Issue 14 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 4, 2023, to advise us of the nature of the accommodation that you need. Please contact Regina Reynolds, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; or e-mail regina.reynolds@mt.gov.

3. The emergency rule is effective June 30, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I HOLMGREN RANCH FISHING ACCESS SITE EMERGENCY CLOSURE (1) The Holmgren Ranch Fishing Access Site is located along the Yellowstone River in Stillwater County.

(2) The Holmgren Ranch Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule will remain in effect until the department determines that the site is again safe for public occupancy. This will depend on the extent and the duration of the cleanup and construction efforts. Signs closing the fishing access site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Regina Reynolds, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail regina.reynolds@mt.gov. Any comments must be received no later than September 1, 2023.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on June 30, 2023.

/s/ Robin Graham
Robin Graham
Acting Deputy Director
Department of Fish, Wildlife and Parks

/s/ Alex Neill
Alex Neill
Rule Reviewer

Certified to the Secretary of State June 30, 2023.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to Alternative Project Delivery Methods	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On June 9, 2023, the Department of Transportation published MAR Notice No. 18-191 pertaining to the proposed adoption of the above-stated rule at page 503 of the 2023 Montana Administrative Register, Issue Number 11.

2. The department has adopted New Rule I (18.4.201) as proposed.

3. No comments or testimony were received.

/s/ Tyler G. Moss
Tyler G. Moss
Rule Reviewer

/s/ Malcolm D. Long
Malcolm D. Long
Director
Department of Transportation

Certified to the Secretary of State July 11, 2023.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 18.16.101 through 18.16.108 pertaining to the Fuel Tax Bridge and Road Safety and Accountability Program	)))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On May 26, 2023, the Department of Transportation published MAR Notice No. 18-193 pertaining to the proposed repeal of the above-stated rules at page 463 of the 2023 Montana Administrative Register, Issue Number 10.

2. The department has repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Malcolm D. Long
Malcolm D. Long
Director
Department of Transportation

Certified to the Secretary of State July 11, 2023.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2023. This table includes notices in which those rules adopted during the period January 27, 2023, through July 7, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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2-43-633 Actuarial Rates and Assumptions, p. 1, 177
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2-51-629 Model Procedural Rules - Orders of the Board - Decision by the Board, p. 596

AGRICULTURE, Department of, Title 4

STATE AUDITOR, Office of, Title 6

6-275 Approved Risk List, p. 317, 476
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COMMERCE, Department of, Title 8

8-94-201 Administration of the Montana Coal Endowment Program (MCEP) - Emergency Grants - Planning Grants, p. 370
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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in June 2023 appear. Potential vacancies from August 1, 2023 through August 31, 2023, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 1, 2023.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR JUNE 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Architects and Landscape Architects			
Ms. Annette Marchesseault Missoula Qualifications (if required): Licensed landscape architect	Governor	Shelly Engler	6/5/2023 4/1/2026
Mr. Dale E. Nelson Great Falls Qualifications (if required): Licensed Architect	Governor	Reappointed	6/5/2023 4/1/2026
Mr. Steven Small Billings Qualifications (if required): Public Member	Governor	Reappointed	6/5/2023 4/1/2026
Board of Housing			
Mr. John Grant Helena Qualifications (if required): Experienced in housing, economics or finance	Governor	John Wright	6/19/2023 1/1/2025
Ms. Amber Parish Billings Qualifications (if required): Experienced in housing, economics or finance	Governor	Adam Hertz	6/19/2023 1/1/2025

EXECUTIVE BRANCH APPOINTEES FOR JUNE 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Montana Arts Council			
Ms. Angella Ahn Bozeman Qualifications (if required): Keen interest in one or more of the arts	Governor	Bohlinger	6/5/2023 2/1/2028
Mr. Corwin "Corky" Clairmont Ronan Qualifications (if required): Keen interest in one or more of the arts	Governor	Reappointed	6/5/2023 2/1/2028
Ms. Cathryn McIntyre Glasgow Qualifications (if required): Keen interest in one or more of the arts	Governor	Tom Cordingly	6/5/2023 2/1/2028
Montana Facility Finance Authority			
Mr. Craig Anderson Billings Qualifications (if required): Public Member	Governor	Paul Komlosi	6/5/2023 1/1/2027
Ms. JoAn Cuffe Eureka Qualifications (if required): Public Member	Governor	Kim Rickard-Smeltzer	6/5/2023 1/1/2027

EXECUTIVE BRANCH APPOINTEES FOR JUNE 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Montana Facility Finance Authority Cont.			
Mr. William Northey	Governor	Matthew Thiel	6/5/2023 1/1/2027
Qualifications (if required): Public Member			
Montana Wheat and Barley Committee			
Lee Dahlman Dutton	Governor	Michael O'Hara	6/1/2023 6/1/2026
Qualifications (if required): District IV Representative			
Mr. Brett Dailey Jordan	Governor	Reappointed	6/1/2023 6/1/2026
Qualifications (if required): District VII Representative			
Public Employees' Retirement System Board (PERS)			
Mr. Dave Galt Helena	Governor	Sheena Wilson	6/12/2023 4/1/2028
Qualifications (if required): Retired public employee and member of PERS			
Doug Kary Billings	Governor	Robyn Driscoll	6/12/2023 4/1/2028
Qualifications (if required): Public Member			

EXECUTIVE BRANCH APPOINTEES FOR JUNE 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
State Library Commission			
Ms. Carmen Cuthbertson Kalispell Qualifications (if required): Public Member	Governor	Dalton Johnson	6/19/2023 6/1/2026
Ms. Peggy Taylor Shelby Qualifications (if required): Public Member	Governor	Reappointed	6/19/2023 6/1/2026

EXECUTIVE BRANCH VACANCIES – AUGUST 1, 2023 THROUGH AUGUST 31, 2023

Board/Current Position Holder	Appointed By	Term End
9-1-1 Advisory Council		
Mr. Jeremy Virts, Great Falls	Governor	8/31/2023
Qualifications (if required): Montana Emergency Medical Services Assn Rep		
Board of Private Security		
Ms. Holly Dershem-Bruce, Glendive	Governor	8/1/2023
Qualifications (if required): Member of the public		
Mr. James Thomas, Canyon Creek	Governor	8/1/2023
Qualifications (if required): Member of the Montana Public Safety Officer Standards and Training (POST) Council		
Board of Veteran Affairs		
Ms. Barb Skelton, Billings	Governor	8/1/2023
Qualifications (if required): None stated		
Mr. Ryan B. Beston, Poplar	Governor	8/1/2023
Qualifications (if required): Tribal Government Representative		
Mr. Richard A. Juvik, Helena	Governor	8/1/2023
Qualifications (if required): Veterans at-large		
Mr. Paul Little Light, Hardin	Governor	8/1/2023
Qualifications (if required): Tribal Member, Honorably Discharged		
Mr. Michael Allen Stone, Bigfork	Governor	8/1/2023
Qualifications (if required): Training, education or experience related to veterans' issues		

EXECUTIVE BRANCH VACANCIES – AUGUST 1, 2023 THROUGH AUGUST 31, 2023

Board/Current Position Holder	Appointed By	Term End
Board of Veteran Affairs Cont.		
Mr. Leonard Garrett Swartz, Missoula	Governor	8/1/2023
Qualifications (if required): Training, education, or experience related to veterans' issues		
Ms. Jennifer Dalrymple, Townsend	Governor	8/1/2023
Qualifications (if required): Honorably discharged veteran-representative of veterans at large		
Mr. Brett Cusker, Bozeman	Governor	8/1/2023
Qualifications (if required): None stated		
Mr. Ryan Luchau, Helena	Governor	8/1/2023
Qualifications (if required): None stated		
Mr. Dean Rehbein, Missoula	Governor	8/1/2023
Qualifications (if required): None stated		
Board of Veterinary Medicine		
Dr. Tia Nelson, Helena	Governor	8/1/2023
Qualifications (if required): Licensed veterinarian		
Burial Preservation Board		
Mr. Tom Escarcega, Poplar	Governor	8/31/2023
Qualifications (if required): Ft. Peck Assiniboine & Sioux representative		
Ms. Skye Gilham, Cut Bank	Governor	8/31/2023
Qualifications (if required): Physical anthropologist		

EXECUTIVE BRANCH VACANCIES – AUGUST 1, 2023 THROUGH AUGUST 31, 2023

Board/Current Position Holder	Appointed By	Term End
Burial Preservation Board Cont.		
Mr. John Murray, Browning	Governor	8/31/2023
Qualifications (if required): Blackfeet representative		
Mr. Kevin Askan, Pablo	Governor	8/31/2023
Qualifications (if required): CSKT representative		
Mr. Thomas Livoti, Missoula	Governor	8/31/2023
Qualifications (if required): Public representative		
Ms. Erika Scheuring, Missoula	Governor	8/31/2023
Qualifications (if required): Montana State historical officer representative		
Mr. Justin Grayhawk, Poplar	Governor	8/31/2023
Qualifications (if required): Ft Peck Assiniboine & Sioux Tribe representative		
Mental Health Ombudsman		
Mr. Dennis Nyland, Helena	Governor	8/1/2023
Qualifications (if required): Mental Health Ombudsman		
Montana Organic Commodity Advisory Council		
Mr. Nate Brown, Belgrade	Governor	8/19/2023
Qualifications (if required): At-Large Member		
Mr. Brian Goldhahn, Bozeman	Governor	8/19/2023
Qualifications (if required): Producer and Livestock		

EXECUTIVE BRANCH VACANCIES – AUGUST 1, 2023 THROUGH AUGUST 31, 2023

Board/Current Position Holder	Appointed By	Term End
Montana Organic Commodity Advisory Council Cont.		
Mr. Daryl Lasilla, Great Falls	Governor	8/19/2023
Qualifications (if required): Producer		

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